

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

UNITED STATES OF AMERICA,)	CR19-00159-RSL
)	
Plaintiff,)	SEATTLE, WASHINGTON
)	
v.)	October 4, 2019 -
)	11:00 a.m.
PAIGE THOMPSON,)	
)	
Defendant.)	DETENTION REVIEW
)	HEARING
)	

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE ROBERT S. LASNIK
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 THE COURT: Good morning. Thank you. Please be seated.

2 THE CLERK: Case CR19-159-L, United States versus Paige
3 Thompson.

4 Counsel, would you please make your appearances?

5 MR. FRIEDMAN: Good morning, Your Honor. Andrew
6 Friedman and Steven Masada for the United States. With us at
7 counsel table is Special Agent Joel Martini from the FBI.

8 THE COURT: Okay. Great. Welcome, Mr. Friedman and
9 Mr. Masada and Agent Martini.

10 MR. HAMOUDI: And good morning, Your Honor. Mohammad
11 Hamoudi and Ms. Stacy Brownstein, investigator from the Federal
12 Defender's Office. We're here on behalf of Ms. Thompson.

13 MR. KLEIN: Good morning, Your Honor. Brian Klein,
14 Baker Marquart, here on behalf of Ms. Thompson also.

15 THE COURT: So, Mr. Klein and Mr. Hamoudi, you guys are
16 both doing it together?

17 MR. HAMOUDI: Yes, Your Honor.

18 THE COURT: And what is the arrangement on that?

19 MR. HAMOUDI: I'm going to be making the argument today.

20 THE COURT: Okay. And is Mr. Klein then a retained
21 lawyer or a pro bono lawyer or --

22 MR. KLEIN: In a pro bono manner, yes.

23 THE COURT: Okay. Great. So you have joined the team?

24 MR. KLEIN: Yes.

25 THE COURT: Wonderful.

1 And welcome, Ms. Thompson.

2 And we have Ben Beetham from U.S. Probation. Nice to see
3 you.

4 MR. BEETHAM: Good morning, Your Honor.

5 THE COURT: Great.

6 So this is a motion for review and revocation of the
7 magistrate judge's detention order. I have reviewed the
8 transcript of the hearing in front of Magistrate Judge Peterson
9 and the materials that were brought forward here today.

10 And, Mr. Hamoudi, you can make the first argument, and then I
11 will hear from the government, and we will take it from there.

12 MR. HAMOUDI: Thank you, Your Honor.

13 As the Court knows, today the Court's review here is de novo,
14 and in order to get a detention hearing, the government must
15 prove by a clear preponderance of the evidence that Ms. Thompson
16 is a serious risk of flight, and the emphasis here is on the word
17 "clear" and the word "serious."

18 The government's arguments are -- or, phrased differently,
19 the government has not prepared any clear evidence to support
20 their argument that there's a serious risk she's going to leave
21 the Western District of Washington, if she is released, because
22 she currently has no stable residence, because she's not
23 currently employed, because she stopped using drugs a couple of
24 years ago, because she has family living in Arkansas.

25 And on that point, we obviously dispute the interpretation of

1 the term "community." We believe that "community" has a broader
2 meaning. And I would like to highlight to the Court that a good
3 portion of her community here in Seattle are here today, and
4 they're seated in the second row. And she does have community in
5 Arkansas. So both of those communities are engaged and are
6 available to her.

7 And this is not to lose sight of the fact that she also has a
8 mental health community that she relies on. And the government
9 also has not presented any clear evidence that she's a serious
10 risk of leaving the Western District of Washington because she
11 has mental health challenges or that she faces the prospect of
12 punishment.

13 The facts the government has identified, Your Honor,
14 respectfully, are ordinary circumstances that many individuals,
15 when they're charged with a criminal offense in this district,
16 face. I think what sets Ms. Thompson apart from many of those
17 individuals are two significant factors to her benefit: the lack
18 of any criminal history, lack of arrests, and her long,
19 continuous willingness to cooperate with authority figures, as
20 stated in the complaint, as stated in much of the evidence that
21 is attached to the government's own briefing.

22 So our position is because the government has not presented
23 clear evidence that there is a serious risk that if this Court
24 were to fashion a bond, release her on conditions, that she would
25 leave this jurisdiction, that we should do that. And those

1 conditions that we have laid out, and any other conditions that
2 the Court would see fit, we believe will reasonably assure her
3 appearance in future proceedings.

4 And as to that aspect, their burden is even higher, Your
5 Honor. They have to show you not only clear but also convincing
6 evidence that if this Court were to release her based on the plan
7 that we have suggested to the Court, that there is some clear and
8 convincing fact that she will not show up to court or she's a
9 danger to the community here in the Western District of
10 Washington.

11 Much of what they cite as to whether or not she will make her
12 court appearance overlaps the arguments I just made about her
13 serious risk of flight. And, again, those are ordinary aspects
14 of individuals that come before this court and they're easily
15 managed here in this district.

16 As to safety, she has no history of violence. There are
17 words that she uses, things that she says, that make people feel
18 concerned. We don't want to minimize that concern. But what
19 we're saying are two things. One, there is a lot of evidence
20 before the Court, in the support letters that have been provided,
21 that individuals have provided context to the Court about those
22 words and about her character, and there is a consistent theme
23 that when she uses words, it is her making a cry out for help and
24 asking for assistance. And what we also see before the Court is
25 evidence that when that help is given to her, she accepts it.

1 All we're asking, Your Honor, is that she be released under a
2 set of conditions that will reasonably assure that she will make
3 her court appearances and that she's not a risk to the community.
4 Now, that plan includes an initial placement at the halfway
5 house. That will be a temporary plan. We're not asking for a
6 permanent placement at the halfway house. Logistically, it is
7 difficult to obtain services, social services, here in King
8 County while you are incarcerated. You are not entitled to some
9 Apple care, for example, or Medicare. You need to be out of
10 custody in order to even be eligible for those programs. If
11 she's released out to the halfway house for a short period of
12 time, she will come to our office, we will assist her in
13 preparing those applications and finding her long-term housing
14 and also finding her suitable employment through temp agencies
15 that we work with normally. In addition, she gets an added
16 benefit, Your Honor, and the added benefit is that -- and I think
17 this speaks to reasonably assuring that she is able to
18 participate, not only show up to court, but participate in these
19 proceedings -- is that she receive the unique type of care that
20 she needs. That's particularly important in this case because
21 the case is a complex case. We are going to need her assistance
22 in this case, and we are going to need to understand this case
23 through her perspective. And a situation where she's receiving
24 care and stabilized outside the Federal Detention Center is
25 necessary so that she can aid us in defending her in this case,

1 Your Honor.

2 Unless the Court has any questions, that's my presentation.

3 THE COURT: Well, let me ask you this, Mr. Hamoudi. The
4 halfway house, do you have a specific halfway house in mind? Has
5 she been screened for it? Would she be allowed to be with people
6 who identify as women or men or trans? What's the situation?

7 MR. HAMOUDI: That's a good question.

8 We would want her to stay at the Seattle halfway house. BOP
9 policy, consistent as it is with the Federal Detention Center,
10 she would not be placed with women. But what would happen -- and
11 with prior transgender persons that I have represented, she could
12 potentially get a room of her own -- but what she does have is
13 privacy with respect to using the bathroom and the shower. And
14 it would only be temporary. Even if she's placed with the male
15 population at the halfway house in Seattle, it would be temporary
16 until we get her suitable housing for herself. And I think that
17 goes back to my original point that, logistically, the obstacle
18 that we face is that while she's at the Federal Detention Center,
19 we can't get these applications started, we can't start this
20 process. It wasn't as if she was homeless when she was arrested.
21 She had a home. It was the arrest that caused her to not have
22 stable employment -- I mean, stable housing.

23 THE COURT: But I'm not likely to send her back to that
24 location where there were, you know, guns and other things going
25 on.

1 MR. HAMOUDI: Yeah.

2 THE COURT: How will you get her housing?

3 MR. HAMOUDI: We will get her housing. There is Compass
4 Housing. Also, Seattle Counseling Service has transgender-
5 specific housing that they have connected with, similar to like a
6 halfway house situation for particular types of individuals.

7 Maybe I can frame it this way, Your Honor. I wasn't bringing
8 up the house to suggest to the Court that she go back to the
9 house. I was bringing up the house to just explain to the Court
10 that it wasn't as if she was homeless.

11 THE COURT: Oh, no. I understand.

12 MR. HAMOUDI: Yeah.

13 So then getting her into, for example, temporary housing, she
14 can get employment. Employment generates revenue/income, which
15 then allows her to find more independent housing.

16 THE COURT: I mean, what she's trained to do, in terms
17 of employment -- obviously, she has incredible computer skills --
18 part of the rules are going to say don't have any access to any
19 computers or anything like that, but we also want her to work
20 with you and co-counsel on the records, which are all on
21 computers and all require her to be able to access them
22 electronically. So I'm just not seeing how the parts are fitting
23 together here.

24 MR. HAMOUDI: So that part, I will explain how it would
25 fit together. We would not want her to work at a particular

1 place of employment that allows her access to technology like
2 that. But we have lots of defendants that use computers. They
3 get charged with offenses using computers and are released on
4 pretrial release, and there's suitable employment like Mod Pizza,
5 a coffee shop.

6 The purpose of her getting employment is to not only create
7 some income, but to create stability and have her be doing
8 something that is, I would say, prosocial.

9 THE COURT: But in this day and age -- you know, it's
10 not like 20 years ago when you could say, you know, yeah, we're
11 going to put some tracking device on your computer and we can
12 control that -- I mean, electronic devices are everywhere. You
13 can borrow somebody's phone, you can walk into somebody's house.

14 How could we actually make sure she wasn't going to have
15 access to uncontrolled internet access and other things like
16 that?

17 MR. HAMOUDI: The response I have for that, Your Honor,
18 is, you know, I listed, I think, 10 or 15 or 20 cases where those
19 same concerns arise, and I think that the legal framework is
20 reasonably assured and --

21 THE COURT: But those cases were more in line with, you
22 know, people who are accessing porn on the internet or stuff like
23 that. That doesn't mean they have tremendous technological
24 skills. Which she obviously has tremendous, you know, tech
25 skills that put her in a category unlike any of those people,

1 that I know of at least.

2 MR. HAMOUDI: It does. But I think that she has not
3 been given the opportunity to be out on bond. And maybe my
4 suggestion to the Court is that we release her to the halfway
5 house and set out a 30-day status conference, before she's even
6 given access to phones, and come back and see what the status is
7 as to, one, longer-term housing, and, two, how she does. You
8 know, the idea is to maybe take it in steps.

9 I'm almost having to prove a negative because one aspect of
10 it is that I understand that there's an accusation here and, you
11 know, we're not in a position to get into the merits of the case.
12 On the other hand, I understand that it is not our burden to
13 produce clear and convincing evidence that she's going to get out
14 of custody, and while out on bond, find some sort of cell phone
15 device and engage in some nefarious activity that the Court is
16 speaking to. And to me, what her behavior pattern suggests to me
17 is, is that when she is in an accountable type of setting, and in
18 an accountable type of setting that is also complemented by
19 support, the right type of support, that she's stable in the
20 community. And that's what the letters from her community
21 reflect; I think what the mental health report that we've
22 provided you reflects.

23 So that's my view of that issue, Your Honor.

24 THE COURT: And at the halfway house, would she be able
25 to access her mental health treatment providers in the community,

1 or not?

2 MR. HAMOUDI: She would get a pass. She would have to
3 put in for a pass -- it would be a condition of bond -- and then
4 she would have to go and come back, and there would be a time
5 frame, as the Court is aware.

6 THE COURT: Yeah. Okay.

7 Thanks, Mr. Hamoudi.

8 MR. HAMOUDI: Thank you, Your Honor.

9 THE COURT: Mr. Friedman.

10 MR. FRIEDMAN: Thank you, Your Honor.

11 As the Court is aware, this Court is the third neutral fact
12 finder that has looked at the question of whether Ms. Thompson
13 should be granted bond or not. Pretrial Services has recommended
14 that she not be, and Magistrate Judge Peterson held a hearing and
15 concluded that there were no conditions of release that would
16 assure her appearance and safety. And the government believes
17 that both of those decisions or recommendations -- well, in one
18 case a recommendation, but then a decision -- are correct, and
19 the Court should reach the same result.

20 The record in this case establishes that Ms. Thompson is a
21 serious risk of flight, and there are multiple things that go
22 into that. When you look at the whole profile, it adds up to
23 someone who is a serious risk of flight.

24 The first thing is lack of stable housing. And it's true
25 that that is because she's not able to return to the house in

1 which she was living at the time she was arrested. But there's
2 also a lack of stable employment. She hasn't had a job since
3 2016. As Judge Peterson found, she has limited ties with family,
4 not only here, but also more broadly in Arkansas. And she has a
5 history of substance abuse that went through at least 2017. It
6 was extremely broad. She's also facing serious charges and a
7 long guideline sentencing range. So factors that both create
8 incentive to flee but also would put her under pressure that is
9 not the kind of pressure she's been under before. And I think
10 that's particularly important in this case because Ms. Thompson
11 has a history of mental health issues that have led to erratic
12 and unpredictable behavior and presumably would be exacerbated by
13 the pressure she would be under.

14 You know, we have laid out in the briefing in this case some
15 of those examples, but there are things that have led to friends,
16 former friends, seeking a restraining order because they were
17 being stalked, someone calling -- several calls to the police
18 about concerning behavior, threats to others, threats to herself.
19 So there's a long history of erratic behavior that contributes to
20 the threat of flight in this case. It's actually not -- I mean,
21 I'm sure it's not lost on the Court, but it's ironic that the
22 handle she has chosen on Twitter is "Erratic." Release is an
23 exercise in trust, and this is someone whose behavior suggests
24 that is a real concern in this case. I think that's enough to
25 establish a serious risk of flight.

1 I would also note that the mental health issues have been
2 tied to a history of suicidal ideation, one actual suicide
3 attempt, and that's another form -- if you look at the *Metz* case,
4 that is another thing that should give the Court pause in terms
5 of release and being assured that Ms. Thompson would actually
6 appear.

7 There's been a lot of briefing about this, but I would just
8 say that being at FDC SeaTac allows -- she was initially on a
9 suicide watch there -- it allows for people to watch closely.
10 She's been taken off that because things are apparently going
11 better at this stage. But if there were reason for concern, she
12 could be placed back on one. So that's a structure that would
13 help to mitigate the risk of flight.

14 Because Ms. Thompson is a serious risk of flight, the Court
15 gets to 3142(g) and the factors that it's supposed to look at
16 there in terms of weighing whether she should be detained or
17 released, and whether there are conditions that can release, and
18 all of those factors point towards detention in this case.

19 The first is the nature and seriousness of the offense
20 charged in this case. As the Court knows, Ms. Thompson is
21 charged with hacking -- Capital One is the highest profile of the
22 victims, but she's now been charged with breaching more than 30
23 companies and taking information from them. And different
24 companies suffered different extensive losses, but if you focus
25 on Capital One, the scope of the damage is astonishing. I mean,

1 Capital One has reserved \$100 million to deal with the expenses
2 that it will incur this year. That doesn't cover what's going to
3 happen down the line, the cost of settlements, things like that.
4 It's hard to conceive what that means, but --

5 THE COURT: It's hard to conceive that a company could
6 put up that much money and still be making huge profits too.

7 MR. HAMOUDI: We should pay our credit card bills on
8 time, Your Honor.

9 THE COURT: Yeah.

10 MR. FRIEDMAN: It is.

11 To try and make it a little more real, we understand from
12 them that they estimate that employees in their tech and cyber
13 department have now spent 200,000 hours dealing with and trying
14 to remediate and trying to respond to this incident, which is a
15 stunning amount, I think.

16 THE COURT: And I have read a lot of people who've said
17 that Capital One just left themselves so vulnerable to this kind
18 of attack; that if they had just put a little bit of the money
19 and time in ahead of time, it wouldn't have been so easy for
20 people to get in.

21 MR. FRIEDMAN: I think there's going to be -- there will
22 be a lot of claims in the civil litigation about how careful they
23 were.

24 THE COURT: Right.

25 MR. FRIEDMAN: But, again, I'm not in a position to

1 opine on that.

2 THE COURT: No.

3 But you don't have any evidence yet that there was any
4 attempt by Ms. Thompson to monetize that information in any way,
5 do you?

6 MR. FRIEDMAN: We don't. She has said -- or she told
7 agents that she had -- I believe she told them she had not
8 attempted to monetize it and that we had recovered the only copy
9 of it.

10 I would switch for a second to something that was marked as
11 Exhibit 1 that I handed up before this.

12 THE COURT: Right. Which is not in my language, but go
13 ahead.

14 MR. FRIEDMAN: It's not in many of our languages. But I
15 think the only point I'm going to make from it is probably one of
16 the few we can understand and express.

17 This is a file that was found within the last couple of days
18 on Ms. Thompson's computer, and what it is, it's a spreadsheet,
19 and several lines are taken from other spreadsheets. So it's an
20 aggregation of information in different files of the data that
21 she took from Capital One. And, basically, each line is one
22 credit card applicant and information about that person. Some of
23 it is coded information that means nothing to us, like what
24 particular offer they received; some of it, which has been
25 redacted, is names and dates of birth and the last four of social

1 security numbers and things like that. The thing that is
2 interesting about this is it shows that Ms. Thompson knew what
3 data she had and was looking at it, or at least one part of it,
4 and working with it and manipulating it, and that she selected --
5 This spreadsheet, the full one -- this is just a portion of it --
6 is between 100 and 200 lines long. The interesting thing is, the
7 vast majority of the people here are Seattle residents. And so
8 that's really the one thing we haven't redacted. We left
9 people's initials and all.

10 So I can't say that that's an attempt to monetize. It's hard
11 to know exactly what this is. But she is working with the data
12 she has taken and segregating people by region. Now, that's
13 actually something that people involved in selling data for
14 credit card fraud purposes do because you want to be able to sell
15 data to people who live in the right area so the credit card
16 doesn't trigger suspicion. So it's something that could be
17 consistent with that, but that's not necessarily what's happening
18 here. It's something that's of concern, no matter what, because
19 given sort of the restraining order for stalking, it also
20 suggests concern about why Ms. Thompson would pick people in
21 Seattle and be looking for their information.

22 So to answer the Court's question, no, we don't have that
23 evidence. We do have this evidence, which that's one possible
24 explanation for.

25 THE COURT: And the FBI forensic people are still

1 working on files and --

2 MR. FRIEDMAN: They are, Your Honor. We estimate we
3 have 20 to 30 terabytes of information. Many of the folders,
4 individual folders, contain millions of files. So there's
5 probably a lot of looking that will be done.

6 They're also monitoring -- I mean, people in Capital One, and
7 others, are monitoring sites where credit cards are sold for
8 credit card fraud and other ways of also seeing if stuff is
9 leaked, and none of that has produced that evidence.

10 THE COURT: Sure. Okay.

11 MR. FRIEDMAN: So nature and seriousness of the offense.
12 It is a very serious offense with far-reaching consequences, and
13 it has just kind of a massive effect on victim company or
14 companies.

15 Strength of the evidence. We always hear from defense that
16 this is the least important, but it is one of the factors. And
17 the evidence in this case is very strong. I mean, there was
18 strong evidence that led to an issuance of a search warrant to
19 search Ms. Thompson's house for evidence of this hacking. Law
20 enforcement recovered the data stolen in the hack from
21 Ms. Thompson's bedroom, and she told people there that she had
22 done this. So that's extremely strong.

23 Third, Ms. Thompson's nature and characteristics. And she
24 has -- we have laid this out -- a history of -- She doesn't have
25 a criminal history, but she has a history of kind of erratic and

1 concerning behavior. And one thing that's notable about that is
2 a lot of this occurred within the last year, and that's a period
3 when Ms. Thompson was receiving mental health treatment, which is
4 one of the things that's being proffered as a condition that
5 would prevent danger, if she were released, or flight. And
6 notwithstanding the fact that she was receiving that, we have
7 this history and this behavior that is of concern.

8 And the fourth is the danger that she would present if
9 released. And there's really two kinds of danger, both of them
10 very serious. One, she's made threats to herself, but some of
11 the threats to herself are threats to commit suicide-by-cop, and
12 that's a dangerous situation for everyone. As the Court knows,
13 that can cause danger or injury to a lot of people. The second
14 is, there is at least one threat to travel to California and
15 shoot up the campus of a social media company. So the defense
16 has raised, you know, questions about, you know, how seriously
17 that should be taken. And that's definitely a question. But
18 these are serious threats, and they are the kind of threats that,
19 particularly in today's society, I think we need to, and people
20 do, take seriously. So they point to a serious concern if she
21 were released.

22 THE COURT: So, Mr. Friedman, I agree with everything
23 you said, but, you know, being a transgender person in our
24 society already puts you at tremendous risk of harm, just living
25 your life. I mean, the murder rate against transgender victims;

1 the targeting of them for abuse and violence is just
2 extraordinary. The way they have been demonized in society, even
3 now to the point of changing the policy on letting them into the
4 military and things like that. It's not easy to be a transgender
5 person under the best of circumstances, and very few transgender
6 people exist under the best of circumstances.

7 I'm very concerned that the Bureau of Prisons wouldn't allow
8 her mental health treatment provider in and that they say, well,
9 we have our own people. But, you know, my experience with that
10 has not been always very good, about -- well, they're general
11 practitioners and they're not specialists or anything like that.

12 And I don't know if you've looked at the recent Ninth Circuit
13 case, *Edmo v. Corizon*.

14 MR. FRIEDMAN: I did not.

15 THE COURT: But the issue there was an Idaho transgender
16 inmate in a male prison who was transitioning to being a woman.
17 And, you know, how the Idaho State authorities dealt with her at
18 various stages was not good, but then they came around to giving
19 her the hormones and they gave her -- allowed her to dress as a
20 woman and use aspects of being a woman, but they still housed her
21 in the male facility. And the issue became: Do we allow her to
22 have gender-confirmation surgery? And the prison doctors said
23 no, even though she had twice tried self-castration because she
24 was so focused on her male sex organs being her big problem.

25 It was a big case. You know, the ACLU and all the

1 transgender community had brought in doctors who said she
2 absolutely needs this gender-confirmation surgery. Judge Winmill
3 in Idaho had a big hearing. He ordered it. The Ninth Circuit
4 Court of Appeals panel was Judge Gould, Judge McKeown, and Judge
5 Lasnik. So I go down to San Francisco and I get to hear that
6 case. So that's great. But, you know, it gave me an education
7 on what it's like to be a transgender inmate and how the prison
8 authorities have never authorized gender-confirmation surgery for
9 an inmate, despite the fact that it should be considered
10 necessary treatment in some cases. So we affirmed what Judge
11 Winmill did. That was an Eighth Amendment violation to deny her
12 the medical treatment that she needed. And each of these cases
13 need to be looked at on its own.

14 But, you know, the idea of how prisons deal with transgender,
15 which is to say, well, we're just going to go by your gender at
16 birth, that's all we can do here because we're not sure that
17 you're going to be safe, but we're also not sure that the women
18 are going to be safe if you are a guy and this and that, and it
19 just hasn't -- I think it's transitioning, if I can use the
20 word, to a better stage, but it's not there yet. And it sounds
21 to me like the Bureau of Prisons isn't quite up to speed on how
22 to cope with transgender people too.

23 What do you think? Have you talked to them? What can you
24 tell me about that?

25 MR. FRIEDMAN: We have talked to them regularly, Your

1 Honor.

2 And the point you raised first, and I will come back to that
3 last, if that's okay --

4 THE COURT: Sure.

5 MR. FRIEDMAN: -- is we just learned of that yesterday,
6 or I guess late on Wednesday, about the --

7 THE COURT: -- the denial of the --

8 MR. FRIEDMAN: Correct.

9 THE COURT: Right. Okay.

10 MR. FRIEDMAN: So what I can tell you is that the Bureau
11 of Prisons is doing a lot to accommodate Ms. Thompson's
12 particular situation. They have something called, I think it's
13 the transgender inmate policy -- I may have the wrong name -- and
14 they are working and trying to comply with that, basically, with
15 people here, and that calls for a committee in Washington to look
16 at and review and make sure they're making the right decisions.

17 Ms. Thompson is housed in the male unit, but she is receiving
18 the drugs that are, I guess, appropriate for basically -- I think
19 one may be the same, one may be a replacement -- but, basically,
20 the drugs that she is using for her transition. So she's
21 receiving that treatment.

22 There is a psychologist there who checks in with her every
23 few days, so they have been consulting, and they report that she
24 is reporting that she generally feels -- doesn't feel specific
25 safety concerns. I guess has expressed, at one stage at least, a

1 general concern. She initially was housed with someone named
2 Park Quan, who was her housemate before her arrest -- and I think
3 that was at her or their joint request -- and subsequently had
4 asked to be transferred, and is now housed with another
5 transgender inmate. So I'm not sure if it's formally at her
6 request, but that that's a situation that I think is one that she
7 prefers to the last one that she had.

8 I think one interesting thing from that is it points out
9 there are actually, when I had one of the conversations, there
10 were several transgender inmates at FDC SeaTac. So this is not
11 actually a unique case. It's a case that happens a bunch. It's
12 happening currently. So people are going through this situation.
13 So I think BOP is doing a lot to address and accommodate
14 Ms. Thompson's situation.

15 Under their policy, people are normally housed initially in
16 the wing or the unit of their biological sex, but then that
17 placement can be changed basically based upon observation, how
18 they're living, how they're doing. It typically takes a number
19 of months. So that is the process that BOP would look at. And
20 where she would end ultimately, I can't tell you. I'm sure, I
21 assume, BOP can't tell you either at this point.

22 In terms of, like, actually -- sort of the thing the Court
23 raised about the case *Edmo v. Corizon*, there has not been a
24 request at this time to have surgery, so they're not --

25 THE COURT: I wasn't suggesting that.

1 MR. FRIEDMAN: So they're not --

2 THE COURT: Yeah.

3 MR. FRIEDMAN: I just meant to say, they're not denying
4 any surgery or treatment that's being asked for.

5 THE COURT: Sure.

6 MR. FRIEDMAN: The one exception is the request to have
7 a psychologist of her own choosing come in. And they did deny
8 that. We spoke to someone there yesterday to follow up on that,
9 and that was, basically, it's not specific to the transgender
10 context; it is how they treat all inmates. They basically don't
11 allow pretrial inmates -- this would be allowed post-trial -- but
12 they don't allow pretrial inmates to have nonfamily member
13 visitors. They do, and are willing to, provide treatment from
14 their psychologist. And my understanding is that they have not
15 been asked to provide any treatment that they're not being
16 provided. So it's not necessarily the people or the specific
17 treatment provider that Ms. Thompson would request, but there is
18 treatment and counseling available, if it's appropriate and being
19 asked for.

20 So I guess what I would say is the Court is correct, being
21 transgender creates a lot of issues, it creates difficulties
22 other people don't have. But with that proviso, the situation
23 Ms. Thompson is in is really the situation that a lot of people
24 find themselves in, which is, they have been arrested and charged
25 with a crime based on their conduct, and so, really, she's ended

1 up in a place based on her actions. It may not be the place that
2 provides you the provider you want or everything that you want,
3 it is less desirable in that sense, but a lot of people deal with
4 that, with a lot of different issues and different kinds of
5 health problems. So it's an unfortunate situation, but I think
6 so far the record would suggest that BOP is doing a good job
7 being concerned with and responding appropriately to the
8 situation. There's no reason to think it won't.

9 If there are issues that arise, I think those are issues
10 that -- they're not for this motion and this proceeding. And the
11 Court's decision, I think the decision for the Court today is:
12 When you look at 3142, is this a case where, under the statute,
13 detention is appropriate? And if other issues arise, they're
14 ones that I assume we will all be brought here to deal with.
15 So --

16 THE COURT: Okay. Thanks, Mr. Friedman. I didn't mean
17 to cut you off. Did you have anything else?

18 MR. FRIEDMAN: I'm just about done.

19 So I was going to say, we had talked about sort of the
20 concern about physical threat. The government believes
21 Ms. Thompson is also kind of an economic or a technological
22 threat. As the Court noted, she has got very strong computer
23 skills. She has the knowledge to do something like this again.

24 I think it's actually interesting to note that as of a couple
25 of weeks ago at least, her computer-use privileges, e-mail

1 privileges at BOP, had been cut off because she had sent an
2 e-mail kind of talking about how to, I guess, evade kind of the
3 limited set of rights that inmates are given and kind of get into
4 the system more generally for whatever purpose. So I think the
5 concern that if she were released, she could do something else
6 similar is a serious concern, and one that the Court should take
7 seriously. And it would not take a super computer. It could be
8 done on a simple computer, it could probably be done on a phone.
9 So I think that's something the Court should be concerned about.

10 We have seen the cases where the child-porn defendants, some
11 of them have been released, but the Court needs to look at the
12 whole picture: the other factors in this case, sort of the
13 threatened risk expressed, and Ms. Thompson's mental health
14 conditions and assess the risk there. I think when you do that,
15 this case is different, and those cases shouldn't guide. The
16 Court should say that that's not a condition that would protect
17 the community.

18 That's really true of all of the conditions the defense is
19 proposing. They talked about a halfway house, but a halfway
20 house is not a secure facility, it's somewhere from which you
21 could walk away.

22 Ms. Thompson, as the Court noted, would be in a male wing.
23 There might be some greater privacy, but it's not a total
24 solution, even to kind of the practical questions.

25 Electronic monitoring is the same. Courts have repeatedly

1 held that doesn't prevent flight or absence. You can simply cut
2 the bracelet off.

3 As to treatment, Ms. Thompson was in treatment during the
4 time of most of the conduct we have talked about -- the
5 restraining orders, the police calls, the crime in this case --
6 and so that doesn't seem like that is different or would solve
7 it.

8 I have already addressed the computer restrictions.

9 I think when the Court considers all of the facts, there are
10 no conditions that could reasonably assure Ms. Thompson's
11 appearance or the safety of the community, and the Court should
12 affirm Judge Peterson's detention order.

13 Thank you.

14 THE COURT: Thanks, Mr. Friedman.

15 Mr. Hamoudi, do you want to take about five minutes and
16 respond?

17 MR. HAMOUDI: Yes.

18 THE COURT: What happened in the detention facility
19 where there was communication about evading the policy, I would
20 like to hear you talk to that a little bit.

21 MR. HAMOUDI: Of course, Your Honor.

22 If you read the whole e-mail and correspondence, she wasn't
23 trying to evade. It spoke to how her mind works. She's a very
24 curious person. She looks at puzzles, she looks at things, and
25 starts to work through them in a unique way that is as -- In

1 conversations I've had with her mother, it's been unique to her
2 since she was a little kid. It was not with any bad intent to
3 want to do something to harm anyone.

4 And I think that that's sort of what's happening. I kind of
5 try to -- I wish we could, like, strip the case of some of the
6 corporate ambiance or the environment and look at it for what's
7 happening. And if I take Mr. Friedman's proffer, and just
8 hypothetically, let's take it as true, that what he's describing
9 is essentially that something was taken and then somebody talked
10 about taking that thing in a very erratic way, and then, so
11 erratic and so publicly, that they then came and got it. And, to
12 me, that's what I'm seeing here. And so then there's this big
13 level of anxiety about, you know, what if we release her, you
14 know, what if. And what if's, it's not our burden to solve what
15 if's. But what I can do is, these interactions that she's had
16 with law enforcement here in the community, you know, the Seattle
17 Police Department makes assessments when they go to a scene,
18 listen to a phone call, somebody is concerned about a potential
19 threat, and they're making on-the-scene assessments and they're
20 looking at a person, they're evaluating a person, they're
21 speaking to witnesses. These police officers exercise a great
22 amount of discretion not to put her under arrest because they're
23 saying to themselves: We don't see the need that she needs to be
24 removed from the community to protect the community. So I think
25 that that evidence sort of speaks to some of the concerns the

1 Court was talking about.

2 And I do want to address what the Court raised about, you
3 know, her being transgender. You know, the Eighth Amendment
4 issue -- and, you know, it's sort of a post-conviction sentencing
5 issue about rights of an inmate -- is it cruel and unusual not to
6 have a particular set of services in a facility that's operated
7 by the government? But we're in a different sort of Eighth
8 Amendment world. We're in the pretrial world where her liberty
9 interests are at their apex. So when we think about harm, what's
10 happening here, I just want to -- Her comment to Dr. Goldenberg,
11 where she's saying to him: I'm trying to put all my feelings on
12 hold until this is over, like I'm out of this place. I think the
13 damage is subjective, like I tolerate being misgendered because
14 that's what I have to do to survive.

15 So when the psychologist staff every two to three weeks goes
16 and checks in on her, what they're concerned with is: Are
17 inmates trying to sexually proposition you? Has anybody tried to
18 touch you inappropriately? It is not a context-specific
19 discussion about: Have people called you "he" or called you
20 "tranny" or made fun of you? Because that damage, it builds over
21 time while she's in the pretrial setting, and I think that that's
22 an important thing for the Court to consider in this pretrial
23 land, before she's convicted, and the need for her to ably assist
24 in her defense. So that's my point on that.

25 And I would only add that not only would we have her at the

1 half -- she would be on electronic home monitoring, she would be
2 on home detention. She couldn't leave without permission.
3 That's even if she goes to a job. Anywhere she goes, it would be
4 strictly monitored.

5 And we would come back with a 30-day plan to the Court. Give
6 her an opportunity to demonstrate to the Court that she can be
7 trusted and then come back and let's revisit it. I think that's
8 a reasonable plan under the circumstances, Your Honor.

9 Thank you.

10 THE COURT: Thanks Mr. Hamoudi.

11 Mr. Friedman?

12 MR. FRIEDMAN: Could I clarify two points, Judge?

13 THE COURT: Sure.

14 MR. FRIEDMAN: Your Honor, the Court asked about
15 monetizing, and I can't remember if it was specifically
16 monetizing the data or accessing it.

17 THE COURT: Yeah.

18 MR. FRIEDMAN: There is evidence that she monetized the
19 access by doing something called cryptojacking, which is
20 basically borrowing or stealing computing power to mine Bitcoin
21 or other coins like that.

22 THE COURT: I remember that, yeah.

23 MR. FRIEDMAN: And the second thing -- Mr. Masada
24 reminded me -- when we spoke yesterday with the Bureau of
25 Prisons, although they are not willing to -- I mean, basically,

1 as they said in the letter, you can't regularly have your outside
2 provider come in and treat you, but they did indicate that if the
3 Court -- you know, if there's a short-term reason or need for
4 something, to evaluate or something like that, or a special
5 circumstance, and the Court indicated that it wanted it, that,
6 you know, he said he would have to speak to the warden, but he
7 expected that that could be accommodated.

8 THE COURT: So were you speaking to the attorney for
9 BOP?

10 MR. FRIEDMAN: We were speaking to someone named Michael
11 North, who is an in-house attorney at SeaTac.

12 THE COURT: Okay. Some of the attorneys have been there
13 through like six or seven different wardens. The wardens come
14 and go, but the legal staff stays, yeah.

15 MR. FRIEDMAN: Thank you.

16 THE COURT: It's kind of like you and U.S. Attorneys,
17 yeah.

18 MR. FRIEDMAN: Sometimes I feel that.

19 THE COURT: Okay.

20 So, Ms. Thompson, let me talk to you directly, okay? Now,
21 you don't have to say anything about the case or anything like
22 that, but, you know, we don't know each other. You must be
23 frightened to be here. And I just want you to know that I've had
24 a lot of contact. This case I handled at the Ninth Circuit, we
25 had amicus briefs from every agency explaining to me about how

1 difficult it is to be a transgender individual in our society.
2 And, you know, the percentage of how many transgender people
3 there are in society means that I have known transgender all my
4 life, but they never were out like people are now, because the
5 sheer numbers would dictate. And it reminds me of where we were
6 30, 40 years ago, you know, with gay people, where there was just
7 such a stigma to be identified, that people didn't come out. And
8 even some of the Supreme Court Justices who wrote some of the
9 worst opinions about gay rights and gay sex, you know, said,
10 "I've never met a gay person," and they were saying that to their
11 law clerks who were gay, but they never could say to their
12 Justice, "Well, I'm gay." And once people started to realize
13 that the gay people were their cousins and their brother-in-law
14 and their neighbors and that they were the people who were just
15 like them, the stigma started to fall. It's not gone completely.
16 And that's roughly where we are, you know, with transgender. But
17 I think, even more than that, the violence against transgender
18 people is remarkable to me and how much transgender people are
19 targeted by so many different aspects of life that make their
20 world so different.

21 So I want you to know that I don't look at you as any kind of
22 freak or any kind of person who doesn't deserve the full panoply
23 of human rights that anyone sitting there does. I see you as a
24 person who has been accused of a serious crime. You have got
25 great lawyers to help you, which makes me feel really proud that

1 our justice system does this. You have got somebody from the
2 Federal Defender's who is an investigator, but she's more than an
3 investigator. She's able to be a social worker and a help for
4 you. And I'm taking this very, very seriously because I want you
5 to be safe, I want you to be getting the treatment that you need,
6 and I'm trying to balance all of these things together. So I'm
7 not prepared to release you today, but I'm seriously considering
8 putting something together along the lines of what Mr. Hamoudi
9 was talking about.

10 I'm going to ask Mr. Beetham, my pretrial services officer,
11 to look into the specific halfway house and report back to me
12 about how things would be handled there, whether they have a bed
13 for you, whether it's a situation that would guarantee your
14 safety, but also the community's safety.

15 But I also need to just hear from you that you recognize that
16 this opportunity is not given to many people, and that if you
17 mess it up for yourself, you'll be messing it up for a lot of
18 people who come after you, where people are going to say,
19 "Remember when Judge Lasnik released that Paige Thompson and then
20 she went out and ..." fill in the blank.

21 Do you understand how important it is that if I do release
22 you, you really, really have to abide by the conditions, do what
23 I say, do what the pretrial services officer says, and do what
24 your attorneys say?

25 THE DEFENDANT: Yes, Your Honor. And I have a lot of

1 friends that I would disappoint if I didn't live up to those
2 expectations, and I intend to do the best that I can.

3 THE COURT: Okay. All right. I'm glad to hear that.

4 Okay. So when I'm ready to act on this, after getting a
5 report from Mr. Beetham, I will have Kerry schedule something,
6 and we will come back into the courtroom. Because whatever I do
7 do, if I do something, it will be where I really want to look you
8 in the eye and say, again, "Ms. Thompson, do you understand what
9 I expect?" and then you'll say, "No, I don't" or "Yes, I do," and
10 we will take it from there. Okay, Ms. Thompson?

11 THE DEFENDANT: Thank you.

12 THE COURT: All right. You hang in there now. I know
13 it's not easy being in there and not knowing what's going to
14 happen and dealing with all the things that you are dealing with,
15 but be strong and be brave, and we'll get through this, okay?

16 THE DEFENDANT: Thank you.

17 THE COURT: All right.

18 Thanks very much, counsel. We will be adjourned for now.

19 (Adjourned.)
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C E R T I F I C A T E

I, Nickoline M. Drury, RMR, CRR, Court Reporter for the
United States District Court in the Western District of
Washington at Seattle, do certify that the foregoing is a correct
transcript, to the best of my ability, from the record of
proceedings in the above-entitled matter.

/s/ Nickoline Drury

Nickoline Drury